92

Supreme Court, U.S.
FILED
071405 MAY 08 2008
OFFICE OF THE CLERK

No. (1)

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT OLSON,

PETITIONER,

vs.

CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; et al.

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II,
District Court Case CJ-2004-121
Oklahoma Appeals # 102398

PETITION FOR WRIT OF CERTIORARI

Robert Olson, Pro Se
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

Questions

(1.) Was I always entitled to a jury trial?

(2.) Was it a *Brady* violation for the judge to accept (extrinsic fraud) and destroy (felony) the only copy of a substantive, ex parte case summary notebook (official court document) without recording or giving notice to the opposing party ?

(3.) Does the judicial action in (2.) above cause the judge to lose jurisdiction ?

(4.) Is it a violation of due process of law for the trial judge to:

(a) not allow oral argument at the original summary judgment hearing ?

(b) To cut off oral argument concerning the "notebook" at hearings on the refile of the original case and new trial thereof ?

(5.) Is it a violation of due process of law for :

(a) the Oklahoma Supreme Court to force the Appellant to use the OK Sup. Ct. Rule 1.36; accelerated appeal procedure? (no brief in chief).

(b) the Appellate judges to knowingly use false and misleading information in their denial opinions ?

(6) Trial Judge Franklin and Appellate Judge Hanson should have recused.

List of Parties

ROBERT OLSON,

Plaintiff, Appellant,
Petitioner,

vs.

CONTINENTAL RESOURCES, INC.,
an Oklahoma Corporation;
HAROLD HAMM, an individual and
President and Chief Executive Officer
of Continental Resources, Inc.;
TOM LUTTRELL, an Individual and
Vice President
of Continental Resources, Inc.;
DAVIS OPERATING COMPANY,
an Oklahoma Corporation; and
WILLIAM H. DAVIS,
an Individual and President
of Davis Operating Company,

Defendants, Appellees,
Respondents.

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page	Appendix Designation	Description of Appendix
10	A	Case Summarily Affirmed Under Rule 1.201
10	B	Petition for Rehearing Denied
10	C	Petition for Certiorari Denied
	D	Appellant's Petition for Rehearing
	E	Appellant's Petition for a Writ fo Certiorari
	F	Appellant Requests Permission to file a brief in support of his side of the case under Oklahoma Supreme Court Rule 1.36(g). Appellant brought District Court Rule 13 and Oklahoma Supreme Court Rule 1.36 into Constitutional question as to Due Process of Law.

35	G	Court's Consideration of Appellant's request to file a brief under Oklahoma Supreme Court Rule 1.36(g) is deferred.
20, 25, 29	H	Affidavit of Julia C. Rieman (Case Summary Notebook)
21, 28	I	Transcript of hearing before Judge Franklin, June 17, 2004 (No longer has the Notebook)
23	J	Judge Hansen's Opinion in the Oklahoma Court of Civil Appeals Case # 99704
26, 45	K	Transcript of the original summary judgment hearing before Judge Franklin, July 17, 2003.
31	L	Transcript of hearing before Judge Franklin, June 16, 2005 CJ-2004-121, oral argument cut short
31	L(a)	Transcript of hearing before Judge Franklin, August 11, 2005 CJ-2004-121, oral argument cut short

35	M	United States Constitution, Fourteenth Amendment, Section 1, due process of law
	N	Vacation of Judgments, Title 12 O.S. Sections 1031, 1031.1, 1032, 1033, 1033, 1034, 1035, 1035, 1037, 1038.
	O	Exerpts from the Rules of Professional Conduct
	P	Code of Judicial Conduct
	Q	District Court Rule 13
	R	Oklahoma Supreme Court Rule 1.36.
	S	Oklahoma Title 21 (Criminal) O.S. Sections 461, 463
	Y	Exerpts from the Transcript of the Judicial disqualification hearing held on January 13, 2005, before Judge Ray Dean Linder .
	Z	28 USCS Section 1257(a).

31	AA	Order overruling Plaintiff's Motion to Vacate and Motion for New Trial.
32	CC	Proposed Summary Judgment Order
32	DD	Actual Summary Judgment Order, October 7, 2005, admits Plaintiff was not fully heard.
36	EE	Judge Robert Dick Bell's Opinion, Case # 102933
49	FF	Exerpts from Clyde Muchmore and Harvey D. Ellis, Jr. treatis on Rule 13 and Rule 1.36 Summary Judgment.
27	**GG**	**Title 12 O.S. Section 100**
24	**HH**	**Olson did attach summary judgment evidentiary materials**

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Garrett v. Kennedy, 14
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99 L.Ed. 942

Likes v. Bigpond, 13
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190 Okla. 112

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47 L.Ed.2d 18

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Oklahoma State Courts Network
Oklahoma Supreme Court No. SD-102398
Docket Sheet:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Robert Olson,
Plaintiff/Appellant,
v.
Continental Resources, Inc., Harold Hamm, Tom Luttrell, Davis Operating Company & William H. Davis,
Defendants/Appellees.

No. SD-102398 (Summary Disposition)
Filed: 08/04/2005
Appealed from: BLAINE County District Court

Parties

Continental Resources, Inc., Appellee
Davis, William H., Appellee
Davis Operating Company, Appellee
HAMM, HAROLD, Appellee
Luttrell, Tom, Appellee
Olson, Robert, Appellant

Attorneys

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Luttrell, Tom

Sartin, Robert B (Bar # 12848)
Barrow & Grimm, P.C.
110 W. Seventh St., Suite 900
Tulsa, OK 74119

Davis Operating Company
Davis, William H.

Events

Event Party Docket Reporter
Lower Court Counts and Other Information

Count ,Case Number, Statute, Crime, Special,
CJ-2004-121
Sentence, Judge, Reporter
Franklin, Ronald G.

Docket

Date	Code	Entry date	Serial #
07-08-2005	DOOA	04 Aug 2005 16:03:19:327	1705796

DATE OF ORDER APPEALED

08-04-2005	CASE	04 Aug 2005 15:29:22:807	1705754

DISTRICT COURT FINAL ORDER OR JUDGMENT INITIAL FILING

08-04-2005	PAY	04 Aug 2005 15:29:35:273	1705756

RECEIPT # 28281 ON 08/04/2005. PAYOR: ROBERT OLSON TOTAL AMOUNT PAID ; $ 200.00 LINE ITEMS: $ 200.00 ON DISTRICT COURT FINAL ORDER OR JUDGMENT INITIAL FILING.

08-04-2005	PETF	04 Aug 2005 16:03:35:107	1705797

PETITION IN ERROR (FILED BY OLSON PRO SE)

08-04-2005	TCON	04 Aug 2005 16:03:48:327	1705798

APPELLANT AGREEABLE TO SETTLEMENT CONFERENCE

08-04-2005	TEXT	04 Aug 2005 16:04:10:557	1705799

ENTRY OF APP PRO SE OF ROBERT OLSON, PLNTF/APLNT

08-04-2005	DSRC	04 Aug 2005 16:04:23:540	1705800

DESIGNATION OF RECORD

08-08-2005	TEXT	08 Aug 2005 11:29:17:463	1706061

JE: APLNT T/SH/CAUSE, NLT 8-23-05, WHY APPEAL SH/NOT BE DSMD FOR LACK OF APPEALABLE ORDER. ETC. N/ATTYS

08-16-2005 TEXT 16 Aug 2005 12:28:32:397 1707584
RESPONSE OF PLNTF/APLNT DR. ROBERT OLSON TO THE SUPREME COURT ORDER FILED AUGUST 8, 2005

08-22-2005 TEXT 22 Aug 2005 09:55:35:610 1708517
ENTRY OF APP OF RIEMAN FOR DFDNTS/ APLEES, CONTINENTAL RESOURCES, HAROLD HAMM & TOM LUTTRELL

08-22-2005 RESP 22 Aug 2005 09:55:21:267 1708518
APLEES, CONTINENTAL RESOURCES, HAROLD HAMM & TOM LUTTRELL'S RESPONSE TO PET IN ERROR

08-24-2005 TEXT 24 Aug 2005 10:14:38:900 1708980
ENTRY OF APPEARANCE BY ROBERT B. SARTIN

08-24-2005 RESP 24 Aug 2005 10:16:35:990 1708982
APLEES, DAVIS OPERATING CO AND WILLIAM H. DAVIS' RESPONSE TO PETITION IN ERROR

08-24-2005 TEXT 24 Aug 2005 11:24:24:167 1709045
JE: CT NOTES APLNT'S RESP T/TH CT'S SH/CAUSE ORDER. ETC. APLNT T/FILE APIE, NLT 9-20-05 ETC. N/ATTYS

8-24-2005 TEXT 24 Aug 2005 12:28:51:900 1709092
APLNT, DR. ROBERT OLSON'S OBJECTION TO APLEE'S STSTEMENT OF THE CASE

09-09-2005 TEXT 09 Sep 2005 12:31:29:430 1711784
APLNT'S MOTION FOR AN EXTENSION OF TIME

09-16-2005 TEXT 16 Sep 2005 10:40:22:800 1713058
JE: APLNT'S MOT F/AN EXT OF TIME IS GRANTED. APLNT IS DIRECTED T/RESPOND T/TH/COURT'S 8-24-05, SHOW CAUSE ORDER NLT 10-20-05. N/ATTYS

10-14-2005 MAIL 17 Oct 2005 13:02:35:293 1718300
PETITION MAILED DATE

10-17-2005 APIE 17 Oct 2005 13:02:26:167 1718299
AMENDED PET IN ERROR

11-07-2005 TEXT 07 Nov 2005 10:06:14:183 1722009
APLEES, DAVIS OPERATING CO AND WILLIAM H. DAVIS' RESPONSE TO AMENDED PET IN ERROR

11-07-2005 TEXT 07 Nov 2005 10:27:30:210 1722030
APLEES, CONTINENTAL RESOURCES, INC., HAROLD HAMM AND TOM LUTTRELL'S RESPONSE TO AMENDED PET IN ERROR

11-07-2005 DSRC 07 Nov 2005 10:29:08:130 1722033
COUNTER-DESIGNATIONOF RECORD

11-15-2005 TEXT 15 Nov 2005 13:00:40:417 1723517
APLNT'S MTN FOR CLARIFICATION

11-29-2005 TEXT 30 Nov 2005 09:37:07:043 1725801
JE: TH/CT NOTES APLNT'S MTN FOR CLARIFICATION. TH/IS AN APPEAL FR/ ORDER DISMISSING 2 DFDNTS & GRANTING SUMM JUDGMENT AS T/REMAINING DFDNT. TH/CAUSE SH/PROCEED ACCORDING T/R.1.36. APLNT SH/FILE A RECORD IN COMPLIANCE W/R.1.36 W/IN 20 DAYS OF DATE OF TH/ORDER. N/ATTYS(

(APP CASE TYPE CHANGED FR/DF TO SD & NEW CERT OF APPEAL MAILED W/ORDER T/DC CLK)**TYPO CORRECTED**

12-06-2005 TEXT 06 Dec 2005 08:10:06:387 1726956

APLNT'S MOTION OR PETITION FOR REHEARING AND EXTENSION OF TIME

12-09-2005 TEXT 09 Dec 2005 10:18:16:527 1727827

JE: APLNT T/COMPLY W/ORDER. MTN OR PET FOR REHEARING IS DENIED. APPLIC FOR ADD.L' 15 DAYS IS GRANTED. N/ATTYS

01-04-2006 TREC 04 Jan 2006 15:08:14:677 1731730

APPELLANT'S RECORD-SUMMARY DISPOSITION 0+4

01-10-2006 TEXT 10 Jan 2006 10:06:44:610 1732588

APLEES' MOTION FOR LEAVE TO FILE SUPPLEMENT TO RECORD ON ACCELERATED APPEAL OUT OF TIME

01-11-2006 TEXT 11 Jan 2006 10:08:28:577 1732802

APLEES, DAVIS OPERATING COMPANY AND WILLIAM H. DAVIS' MOTION TO FILE RULE 1.36(D) SUPPLEMENT TO RECORD OUT OF TIME

01-17-2006 TEXT 17 Jan 2006 08:34:16:303 1733533

JE: APLEE GRANTED LEAVE TO FILE SUPPL TO REC BY 1-24-06. N/ATTYS

01-19-2006 EREC 20 Jan 2006 07:58:43:190 1734117

APLEES, CONTINENTAL RESOURCES, INC., HAROLD HAMM, AND TOM LUTTRELL'S SUPPLEMENT TO RECORD ON ACCELERATED APPEAL 0+4 **CORRECTED TYPO **

Docket

Date	Code	Entry date	Serial #
01-23-2006	TEXT	23 Jan 2006 10:24:23:717	1734574

APLEES, DAVIS OPERATING CO & WILLIAM H. DAVIS' MTN FOR EXTN OF TIME TO FILE R.1.36(D) SUPPLEMENT TO RECORD

01-24-2006	EREC	24 Jan 2006 10:03:26:700	1734857

SUPPLEMENT TO RECORD ON ACCELERATED APPEAL 0+4

02-02-2006	TEXT	2 Feb 2006 11:41:06:483	1736652

APLNT'S REQUEST FOR PERMISSION TO FILE BRIEF IN SUPPORT OF HIS SIDE OF THE CASE UNDER OKLA SUP CT R 1.36(G)

02-08-2006	TEXT	25 Apr 2007 09:14:37:710	1815639

APLEES, DAVIS OPERATING CO & W.H. DAVIS' W/DRAWAL OF MTN FOR EXTN OF TIME T/FILE R.1.36(D) SUPPLEMENT TO RECORD ***ENTRY ADDED***

02-09-2006	TEXT	09 Feb 2006 13:12:47:087	1737938

JE: CONSIDERATION, IF ANY, OF APLNT'S REQ F/PERMISSION T/FILE A BRIEF UNDER OK SUP CRT RULE 1.36(G) IS DEFERRED. N/ATTYS

02-09-2006	TEXT	02 May 2007 11:22:49:517	1737939

JE: CONSIDERATION, IF ANY, OF APLNT'S REQ F/PERMISSION T/FILE A BRIEF UNDER

OK SUP CRT RULE 1.36(G) IS DEFERRED. N/ATTYS ***ENTRY ADDED AS INADVERTENTLY OMITTED***

04-25-2007 CCAT 25 Apr 2007 08:53:16:073 1815628
ASSIGNED TO COURT OF CIVIL APPEALS, TULSA

05-07-2007 TEXT 07 May 2007 11:01:12:273 1817714
APLNT RENEWS HIS REQUEST FOR PERMISSION TO FILE A BRIEF IN CHIEF IN SUPPORT OF HIS SIDE OF THE CASE UNDER OKLAHOMA SUPREME COURT R 1.36(G) COA/TULSA

10-30-2007 COPN 30 Oct 2007 13:09:30:170 1848109
JE: OPIN---SUMMARILY AFFIRMED UNDER R.1.201----WISEMAN, J., CONCUR: RAPP, CJ, FISCHER, PJ.------SUMMARY--------- C/ATTYS & DC JUDGE

10-30-2007 1004 30 Oct 2007 13:09:36:090 1848110
AFFIRMED (OPINION)

11-08-2007 MAIL 09 Nov 2007 10:51:42:180 1849983
PETITION MAILED DATE

11-09-2007 CREH 09 Nov 2007 10:51:28:323 1849982
APLNT'S PET FOR REHEARING COA/TULSA

11-21-2007 TEXT 21 Nov 2007 10:45:24:440 1851812
MOTION FOR AND REQUEST FOR PERMISSION TO SUBMIT THE FOLLOWING POINTS OF CLARIFICATION TO THE COURT CONCERNING THE: PETITION FOR REHEARING COA/TUL

12-11-2007 CRHD 11 Dec 2007 15:28:26:343 1854606
JE: APLNT'S MTN T/SUBMIT 2 PNTS OF CLARIFICATION,ETC, IS GRANTED.**** **APLNT'S PET FOR REHE, ETC, IS DENIED. ****ALL JUDGES CONCUR. C/ATTYS, OBJ & COA/TULSA

12-14-2007 TEXT 14 Dec 2007 12:36:58:177 1855409
MOTION TO CORRECT THE FILING DATES OF APLNT'S PETITION FOR REHEARING AND APLNT'S MOTION TO SUBMIT TWO POINTS OF CLARIFICATION CONCERNING ITS DECISION OF OCTOBER 30, 2007 ON THE PETITION FOR REHEARING COA/TUL

01-02-2008 CERT 02 Jan 2008 11:07:09:973 1857584
APLNT'S PET FOR CERT ($OC) COA/TULSA

01-14-2008 CERA 14 Jan 2008 12:17:51:653 1859302
ANSWER TO APLNT ROBERT OLSON'S PET FOR CERT

01-22-2008 CERR 22 Jan 2008 11:13:13:570 1860448
PLNTF'S REPLY TO DEFNDTS' ANSWER TO APLNT'S PETITION FOR WRIT OF CERT

02-11-2008 CTDE 11 Feb 2008 12:26:37:263 1863725
JE: APLNT'S PET F/CERT IS DENIED. CONCUR:WINCHESTER, CJ, EDMONDSON, VCJ, HARGRAVE, OPALA, WATT, TAYLOR, COLBERT, REIF, JJ. DISSENT: KAUGER, J. N/ATTYS COA/TUL

JURISDICTION

For cases from state courts:

The date on which the highest state court, the Oklahoma Court of Civil Appeals, Division II, decided my case was: October 30, 2007
A copy of that decision appears at Appendix A .

A timely Petition for Rehearing in the Oklahoma Court of Civil Appeals, Division II, was thereafter denied on the following date : December 11, 2007, and a copy of the order denying rehearing appears at Appendix B .

A timely Petition for Certiorari to the Oklahoma Supreme Court was thereafter denied on the following date: February 11, 2008, and a copy of the order denying certiorari appears at Appendix C . 28 USC S 2403(b) may apply court certification unknown

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C.S Section 1257(a).

List of Constitutional and Statutory Provisions involved, Contained in the Appendix

Appendix	Provision Involved
M	United States Constitution, Fourteenth Amendment, Section 1. Due Process of Law 28 U.S.C.A. Section 455(a) Judicial Impartiality
N	Title 12 Oklahoma Statutes, Section 1031, Vacation or Modification of Judgments, (1031(4)), and Section 1033, Procedure after 30 days Section 1038, Limitations.
O	Exerpts from the Oklahoma Rules of Professional Conduct.
P	Oklahoma Code of Judicial Conduct.
Q	The Oklahoma District Court Rule 13.
R	The Oklahoma Supreme Court Rule 1.36.

Appendix	Provision Involved
S	Title 21 O.S. , Section 461, Larceny or Destruction of Records by Clerk or Officer.
T	Oklahoma Civil Procedure Forms and Practice, Volume 2 Clyde A. Muchmore, Harvey D. Ellis, Jr.
U	Okalhoma Statutes Title 12 O.S. Section 100
V	Oklahoma Statutes Title 12 O.S. Section 556
W	Oklahoma Statutes Title 12 O.S. Section 556.1
X	Oklahoma Statutes Title 12 O.S. Section 557
Y	U.S. Supreme Court Rule 29(4.)(c)
Z	28 USCS Section 1257(a)

Concise Statement of the Case
Setting out the facts material to consideration of the Questions presented :

Question (1.) Was Petitioner, Dr. Robert Olson always entitled to a jury trial ?

In ***I.C. Gas Amcana, Inc., v. J.R. Hood,*** (Okla. 1992) 855 P.2d 597, 599, 1992 OK 119, the Oklahoma Supreme Court is quoted as saying:

> 'The right of trial by jury in civil cases is guaranteed by Article 2, Section 19 of the Oklahoma Constitution which states that such right " shall be and remain inviolate" except in civil cases involving $ 100.00 or less. (FN1) Title 12 O.S. 1981, Section 556 provides for issues of fact arising in actions for recovery of money, or of specific real or personal property to be tried to a jury. All other fact issues are to be tried to the court, as are issues of law. 12 O.S. 1981, Sections 556-57.'
>
> "[1] In interpreting these statutory provisions, this Court has long held that a jury trial will be denied only in questions of purely equitable cognizance. ***Eash v. Pence,*** 121 Okla. 7, 246 P. 1091 (1926); ***Likes v. Bigpond,*** 190 Okla. 112, 121 P.2d 596 (1942). Furthermore, when an equity cause of action and law claim are

involved in one suit, the trial court at its discretion may submit the equity case to the jury, but it is its duty to submit the law case to the jury for determination. ***Chouteau v. Hornbeck,*** 125 Okla. 254, 257 P. 372 (1927); ***Garrett v. Kennedy,*** 193 Okla. 605, 145 P.2d 407 (1943)."

Title 12 O.S. 1991:

Section 556. Trial of issues

Issues of law must be tried by the court, unless referred. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as hereinafter provided. R.L. 1910, section 4993.

Section 556.1. Constituency of juries in civil actions — Trial without jury in certain cases

(a) Where the amount in controversy, as stated in the prayer for relief or an affidavit of a party, or as found by the court where the amount in controversy is questioned by the adverse party, does not exceed One Thousand Five Hundred Dollars ($1,500.00), the action shall be tried to the court without a jury.

(b) In actions for forcible entry and detainer, or detention only, of real property and collection of rents therefor a jury shall consist of six (6) persons.

(c) Except as provided in parts (a) and (b) of this section, actions for the recovery of money or specific real or personal property or both shall be tried to a jury of twelve (12) persons (1) if a party requests the recovery of money in the sum of at least Ten Thousand Dollars ($10,000.00) or (2) if a party files an affidavit that the action involves at least Ten Thousand Dollars (10,000.00) and the adverse party does not controvert the affidavit, or (3) if the adverse party controverts such an affidavit, if one is filed, and the court finds that the action involves at least Ten Thousand Dollars ($10,000.00); all other actions for the recovery of money or specific real or personal property or both shall be tried to a jury of six (6) persons. Laws 1968, c. 371, section 2; Laws 1969, c. 331, section 1, emerg. eff. May 7, 1969; Laws 1991, ch 15, section 1.

Section 557. Certain issues of fact tried by court

All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by jury, or referred as provided in this Code. R.L. 1910, Section 4994.

The original filing in Blaine County District Court was Case CJ-2002-151, filed September 23, 2002. Petition was titled: Petition to Quiet Title and Recover Real Property and Money. (My override is actually an interest in Real Property and is thus

personal property.) Causes of Action were (1) Quiet Title, (2) Sham Legal Process (washout fraud), (3) Civil Conspiracy. The prayer for relief included a request for actual damages of an amount in excess of Ten Thousand Dollars ($10,000.00), a request for punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00) for Sham Legal Process and punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00) for civil conspiracy with knowledge of wrongdoing. Record in Oklahoma Court of Civil Appeals Case # 99704, Record on Accelerated Appeal, tab 1.

In Plaintiff's Response to Defendants' Motions for Summary Judgment, filed on June 27, 2003, on Page 44, Summation sheet, the Plaintiff has said he has:

(a) Controverted most of the Defendants' "facts",

(b) Controverted the Defendants' statements and conclusions under all Defendants' Motion for Summary Judgment sections,

(c) Plaintiff has not received the allowed discovery: So Rule 13(d) should apply,

(d) Found many jury questions:

(1.) the determination whether the "Old Leases" were valid is a jury question,

(2.) the determination whether the "New Leases" were false documents and thus were forgeries, is a jury question,

(3.) the intent of all Defendants is a jury

question,

(4.) determination of the status of the override property is a jury question,

(5.) issue of lease expiration is a jury question,

(6.) intent of all parties in the settlement agreement is a jury question

(e) The Defendants have breached the operating agreement as to Plaintiff Robert Olson and have breached their fiduciary duty as to Robert Olson. This fiduciary duty is also a jury question. Jury trial issue ignored.

Sham Legal Process is a jury trial issue to consider the fraud of releasing old leases and and operating the identical same property, without ever vacating the premises and refusing to pay the override. (Petition, CJ-2002-151, Record in Appeal # 99704, pages 482-483). Jury trial issue ignored.

The jury trial issue was raised again, to the Oklahoma Supreme Court, in the Petition in Error, #99704 (CJ-2002-151), filed Aug 27, 2003 , in Exhibit C therein, page 2, issue 2. (f.) and 2. (g). Jury trial issue was ignored.

The jury trial issue was raised again to the Oklahoma Supreme Court, Appeal # 102933, Petition in Error, one page summary, Exhibit B, discussion of fraud, a jury question; Exhibit C [issues] discussion of fraud , a jury question, filed Jan 4, 2006. . Jury trial issue ignored.

The jury trial issue was raised again in the

Brief in Chief for Oklahoma Supreme Court Appeal # 102933, an exhaustive discussion of fraud, which is a jury trial issue. Jury trial issue ignored

The jury trial issue was raised again in Appellant's Petition for Certiorari in Oklahoma Supreme Court Appeal # 102933, page 9 therein; jury trial. Jury trial issue ignored.

The jury trial issue was raised again in Appellant's initial Petition in Blaine County District Court Case CJ-2004-121, the refile, Filed September 7, 2004. The Petition was to Quiet Title and to Recover Interest in Real Property and Money and Tort Petition of Sham Legal Process Interference with a Business Contract and Conversion. These are jury trial issues. The prayer for relief claimed actual damages in an amount in excess of Ten Thousand Dollars ($10,000.00) as well as punitive and exemplary damages. Again, jury questions. Jury trial issue ignored.

Whether the Original case was decided on other reasons other than on the merits is a jury question. Fraud in obtaining the original summary judgment is a jury question to determine the validity of the refile. Jury trial issue ignored.

The jury trial issue was raised again to the Oklahoma Supreme Court in Appeal # 102398, filed Jan 4, 2006 , Exhibit C, discussion of fiduciary duty, title, fraud, sham legal process, interference with a business contract and conversion are all

jury trial issues. Jury trial issue ignored.

The jury trial issue was raised again to the Oklahoma Supreme Court, Appeal Case #102398, in Appellant's Petition for a writ of Certiorari in the prayer for relief therein , including jury trial, filed January 2, 2008. Jury trial issue ignored.

Question (2.) Was it a ***Brady*** violation for the Judge to accept (extrinsic fraud) and destroy (a felony) the only copy of a substantive, *ex parte* case summary notebook (official court document) without recording it of record and not giving the adverse party notice ?

Criteria for a ***Brady*** violation include:

(a) the prosecution suppressed evidence,
(b) the evidence would have been favorable to the accused
(c) the suppressed evidence is material.

United States v. DeLuna, 10 F.3d 1529; 1993 U.S. App. LEXIS 31590, HN7, Page [**1].

At (a) above:

The "prosecution" can be defined :

"The action of prosecuting officers on behalf of the state, like that of administrative officers in the execution of its laws, may constitute state action within the purview of the Fourteenth Amendment. That Amendment governs any action of a state, whether through its legislature, through its courts

or through its executive or administrative officers." ***Mooney v. Holohan, Warden,*** 294 U.S. 103; 55 S. Ct. 340; 79 L.Ed 791; 98 A.L.R. 406.

A judge is classified as an officer of the state.

At (b) above

There is no doubt that the suppressed evidence (the case summary notebook) would have been favorable to the Plaintiff / Appellant : He would have been able to confront and refute the the positions set up by the suppressed evidence.

At (c) above

The Defendants' counsel has admitted by affidavit that the case summary notebook contained copies of case law, indexed to their summary judgment motion and briefs and highlighted as to passages. See Affidavit of Julia C. Rieman, Appendix H Paragraph 4, and Appeal #102933 Record, pages 1577, 1578. In an adversarial process, that kind of evidence is very material for impeachment.

That suppressed evidence has been characterized by the Defendants' counsel as assistance to the judge in making his decision. As such, that legal assistance falls under Canon 3B(6)(a) and Canon 3b(6)(b) of the Code of Judicial Conduct. Opposing Counsel can hardly be considered as an impartial

source of legal assistance. And under Canon 3B(6)(b) the judge is affirmatively required to file the assistance of record and give notice to all and afford them the opportunity to respond. Trial Court Judge Ronald Franklin did not do that.

The action of a judge accepting clandestine, substantive *ex parte* assistance from counsel of one side of the case in forming his decision without notice to the adverse party, has been deemed fraud on the party that did not receive notice and the opportunity to respond. ***Fellows v. Owens,*** 62 P.2d 1215; 178 Okla. 224; 1936 OK 722.

Only one copy of the case summary notebook, not filing it of record, no notice to the adverse party, and subsequent disposal of the case summary notebook, (which is a felony under Title 21 O.S. Sec 461), demonstrates bad faith on the part of Judge Franklin. Transcript of June 17, 2004, Appendix I.

(d) An Additional element of a ***Brady*** style Fourteenth Amendment violation is the utilization of knowingly false testimony. ***Alcorta v. Texas,*** 355 U.S. 28; 78 S. Ct. 103; 2 L.Ed.2d 9 (1957) (in the summary), and ***Napue v. Illinois,*** 360 U.S. 264; 79 S. Ct. 1173; 3 L. Ed.2d 1217.

" Conviction ..."..obtained through use of false

evidence, known to be such by representatives of the state, must fall under U.S. Const. Amend. XIV. The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears." ***Napue, Supra.***

Defendant's Motion for Summary Judgment says:

> " ' While a mere cessation in production will not result in a termination of the lease, cessation of production for an unreasonable period will. ***Pack v. Santa Fe Minerals,*** 1994 OK 23; 869 P.2d 323, 326-327. "In short, the lease continues in existence so long as the interruption of production in paying quantities does not extend for a period longer than reasonable or justified in light of the circumstances involved." ***Pack,*** 869 P.2d at 327, quoting from ***Stewart v. Amerada Hess Corp.,*** 1979 OK 145; 604 P.2d 854, 858.' " (Record, Okla. Sup. Ct. Case # 99704, page 791). **For comparison:**

The statement in ***Stewart, supra.*** actually says:

> "In short, the lease continues in existence so long as the interruption of production in paying quantities does not extend for a period longer than reasonable or justifiable in light of the circumstances involved, **but under no circumstances will cessation of production in paying quantities *ipso facto deprive the lessee of his extended estate."***

For Defendants' counsel to use only half of the quoted statement is a false and misleading statement of law to the court. The trial judge Franklin allowed no oral argument in the summary judgment hearing and thus deprived the Plaintiff of Due Process of Law.

Defendants claimed they surrendered the oil and gas leases, **but they never vacated the premises. Defendants also paid Plaintiff's override before, during and for a time after the "release and surrender" of the original leases.**

In her Opinion in the Oklahoma Court of Civil Appeals, Div III, Case No #99704, Filed Feb 17, 2004, (Appendix ___,I___), Judge Carol Hansen states: pgrf 1: ' "We affirm because Olson submitted no evidentiary materials establishing a material

issue of fact." ... pgrf 8. "Olson objected to the motions for summary judgment, but submitted no evidentiary materials whatsoever." ' **These statements are utterly false !** Plaintiff / Appellant did attach evidentiary materials to his Motion to the trial court to deny Defendants' Motions for summary judgment. Opposing counsel admit evidentiary materials were attached, (Record Case # 99704, pgs 1601 - 1609).

Question (3.) Does the judicial action in Question (2.) above cause the Judge to lose jurisdiction ?

Correlary question. Does the judicial action described above and below cause not only the original trial judge to lose jurisdiction, but does that kind of judicial action also cause Appeals Judges and Oklahoma Supreme Court Judges to lose jurisdiction ?

Appellant did not find out about the judicial fraud of the case summary notebook until after the Oklahoma Court of Appeals Case # 99704 Certiorari was denied. It became apparent that something was seriously wrong when Judge Franklin did not have the only copy made of the Case Summary Notebook and that he had not filed

the ex parte notebook of record. Transcript of Proceedings, June 17, 2004, page 6, lines 17-19, and Affidavit of Julia C. Rieman, Appendix H .

The questions of fraud and jurisdiction were raised in the Exhibit C of the Petition in Error in Oklahoma Supreme Court Case # 102933, filed on January 4, 2006.

Judicial fraud was raised again in the Petition in Error to the Oklahoma Supreme Court in Case # 102398; which is the case this request for a Writ of Certiorari to the United States Supreme Court comes from.

Fraud in obtaining judgment destroys jurisdiction of the court rendering such judgment. ***Nardi v. Poinsatte,*** 46 F.2d 347. See also ***Petition of Dare,*** Okla. Crim. App. 370 P.2d 846 (1962). The Oklahoma Appellate Courts have treated the judicial fraud as inconsequential and have ignored the jurisdiction question.

Question (4.) Is it a violation of the Fourteenth Amendment due process of law provision for the trial judge to:

(a) not allow oral argument at the original summary judgment hearing ? (Case CJ-2004 -121 is the refile of the original case; subsequently Okla Sup. Ct. Case # 102398, subsequently this request for Writ of Certiorari.)
(b) to cut off oral argument concerning the "Notebook" at hearings on the refile (CJ-2004 -121) of the original case; and at hearings on new trial and summary judgment thereof (CJ-2004-121) ?

Under (a) above:

Trial Judge Franklin did not allow oral argument from the Plaintiff in the original case (CJ-2002-151) summary judgment hearing held in the Blaine County Courthouse on July 17, 2003. Please see the Transcript of the hearing before Judge Franklin held on July 17, 2003. Appendix K.

Under (b) above:

Trial Judge Franklin cut off Plaintiff / Appellant's oral argument concerning his right to refile Blaine County District Court Case CJ-2002 -151 as CJ-2004-121 under Title 12 O.S. § 100. Plaintiff had the right to refile because:

(aa) the summary judgment order in CJ-2002-151 did not reach the merits outright and

(bb) Judge Hansen decided her Opinion in Court of Civil Appeals Case # 99704 on a misperceived District Court Rule 13 violation that absolutely did not exist.

(cc) Intrinsic fraud was present within the case and actions behind the Defendants' Motions for summary judgment. False documents of title.

(dd) It was discovered that the original summary judgment was also procurred through judicial fraud with the judicial acceptance of the substantive ex parte case summary notebook from Defendants' counsel.

Civil Appellate Judge Hansen's Opinion in Appeal Case # 99704 was filed on February 17, 2004. The refile Petition was filed on September 7, 2004 -- timely.

Plaintiff recognized the Civil Appeals Opinion in Case # 99704 did not meet the "merits" threshhold and became aware of the extrinsic fraud probability when Judge Franklin admitted he did not have the one and only copy of the notebook. "Quite frankly I don't have that anymore. Since the matter is over with I don't retain those things." Transcript of hearing on June 17, 2004, page 6 therein, Appendix I, page I-7. *The evidence was gone.* Destruction of court documents is a felony under Title 21 O.S. Sec 461.

So, I the Plaintiff still had no tangible proof. Since the original summary judgment hearing was so unfair; and I had filed a complaint on Judge Franklin and Judge Hansen with the Oklahoma Judicial Complaints Committee; And Judge Franklin admitted he had accepted the substantive ex parte case summary notebook from opposing counsel, I requested, on October 10, 2004, Judge Franklin to recuse. He refused.

However, the persuit of disqualification of Judge Franklin did flush out a hearing before Judge Ray Dean Linder, held on January 13, 2005 (For a complete copy of this transcript, please see pages 8 - 53 of the Appendix in U.S. Supreme Court Case 05 - 1057), and the affidavit of Julia C. Rieman, (Appendix ___H_ herein) where she admits making the case summary notebook, her description of what it contained and the admission that the notebook was given to Judge Franklin and that he accepted the notebook.

This is tangible proof of the clandestine, substantive ex parte communication between the judge and opposing counsel. This type of action has been labeled fraud by the Oklahoma Supreme Court in ***Fellows v. Owens,*** 62 P.2d 1215; 178 Okla. 224; 1936 OK 722.

This is tangible proof of extrinsic fraud by the trial judge in case CJ-2002-151 and consequent judicial disregard of his affirmative duty to hold a fair trial and his judicial disregard of the Plaintiff's Fourteenth Amendment rights to a fair trial and due process of law.

If the Court decides to read the January 13, 2005 Transcript, please note how dismissive and condescending Judge Linder is to the pro se Plaintiff /

Appellant. The judge was disruptive of Plaintiff / Appellant's oral arguments and seemed to be trying to goad the Plaintiff / Appellant into getting mad and making an intemperate remark which would give the Judge an excuse to shut the hearing down. Presiding District Judge Ray Dean Linder and opposing counsel testified that substantive ex parte communication between counsel and Judges is commonplace in Oklahoma.

Defendant Continental Resources, Inc. is probably the largest employer in Enid, Oklahoma. Their address is 302 N. Independence, Enid, Oklahoma 73702, Garfield County. Judge Franklin's office address is 114 West Broadway, Enid, Oklahoma, 73702, Garfield County, and the address for counsel for Continental Resources, Inc. is 323 West Broadway, Enid, Oklahoma, 73702, Garfield County.

The property in question is in Blaine County, Oklahoma. The county seat is Watonga, Oklahoma, 73772. There is a resident Associate District Judge in Blaine County. Why was it necessary to export a District Judge from Garfield County to preside over the case in Blaine County. I, Pro Se Plaintiff, Dr. Robert Olson, Geologist, feel I ran into local politics from Enid Oklahoma and got a biased judge. Continental Resources had valued the property at $937,000.00 in the ground, not in my pocket.

Judge Franklin cut off oral argument concerning the effect the fraud of the clandestine, substantive ex parte notebook would have on Plaintiff's right to refile Case CJ-2002-151 as CJ-2004-121. See the Transcript of June 16, 2005, Appendix L, page 8 therein. The issues of the original summary judgment not being on the merits and Judge Hansen's faulty Opinion were also raised again and dismissed. See the Order overruling Plaintiff's Motion to Vacate and Petition for New Trial, filed June 16, 2005. Appendix AA. The trial court viewed everything as res judicata and overruled for Defendants Davis Operating Company and William H. Davis. The Plaintiff's point of view is that there must be judicata before there can be res judicata.

As to Defendants Continental Resources, Inc., Judge Franklin more strongly cut off oral argument concerning the effect the fraud of the clandestine, substantive ex parte case summary notebook would have on Plaintiff's right to refile Case CJ-2002-151 as CJ-2004-121. See the Transcript of August 11, 2005, pages 5 and 6 therein. Appendix L(a).

The Defendants' counsel wrote the Order Granting Summary Judgment with the words :

The Court, having heard arguments from counsel for the Defendants, Continental Resources, Inc.,

> Harold Hamm and Tom Luttrell, **and from the Plaintiff,** (bold by Plaintiff) , and having reviewed the briefs filed by the parties, finds that the Motion should be granted.

Appendix CC .

Plaintiff felt this wording did not accurately express what happened at the hearing and demanded changes in the wording. Judge Ray Dean Linder rewrote the passage as:

> The Court, having heard arguments from counsel for the Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell, **and from the Plaintiff, the Court noting that the Plaintiff wanted to be heard additionally but the Court determined that Plaintiff had been provided sufficient time for argument and additional argument would be repetitive from previous hearings and appearances,** and the Court having reviewed the briefs filed by the parties, finds that the Motion should be granted.

Appendix DD . And filed October 7, 2005

Question (5.) Is it a violation of Due Process of Law for:

(a) the Oklahoma Supreme Court to force the Appellant to use the Oklahoma Supreme Court Rule 1.36, Accelerated Appeal Procedure ? (No Brief in Chief and a known lesser reversal rate on summary judgment.) **(Known lesser justice.)**

(b) the Appellate Judges to knowingly use false and misleading statements in their denial opinions ?

Under (a) above:

Judge Hansen perceived a Rule 13 violation that **did not exist !** Even with that perception, Judge Hansen was affirmatively required to check the legal status of the situation, and she did not. That exemplifies two plain errors immediately. Then Judge Hansen virtually copied the legal errors of the trial court. For example: (1. a productive oil and gas lease **does not immediately just ipso facto expire** due to a temporary cessation of production, (2. An oil and gas lease **cannot be surrendered without vacating the premises;** i.e. no vacation of the premises--- no legally effective surrender. Then Judge Hansen applied primary term oil and gas lease case law to a vested secondary term oil and

gas lease situation. This is a third plain error. This is Oklahoma Court of Civil Appeals Case # 99704.

These errors are part of the refile of Case CJ-2002-151 as CJ-2004-121 because such errors cannot support any claim that the Opinion was on the merits. This brings us to Oklahoma Supreme Court Appeal # 102398.

The requirement by the Oklahoma Supreme Court that the Appellant must use OK. Sup. Ct. Rule 1.36, accelerated appeal did not allow the Appellant to brief the Oklahoma Supreme Court on the fact errors and the legal errors manifest in the summary judgment decision from the trial court. Then for the Civil Appeals Court to blindly follow the trial court in its errors is amazing. Then for the entire Appellate judicial structure to accept a Judicial Work Product with that many errors without any corrections shows a great indifference to the concept of justice and judicial duty.

Appellant filed the appeal under the normal appellate procedure. On November 29, 2005, the Oklahoma Supreme Court ordered the cause to proceed according to Okla. Sup. Ct. Rule 1.36. (See the Oklahoma Supreme Court Docket Sheet, Appendix Text pg 1-9) Preparing the Record and

getting an agreement from opposing counsel on the wording of the final order took some time.

On February 2, 2006, the Plaintiff / Appellant filed a request for permission to file a brief in support of his side of the case under Oklahoma Supreme Court Rule 1.36(g), and overtly brought notice to the Oklahoma Supreme Court that District Court Rule 13 and Oklahoma Supreme Court Rule 1.36 were brought into question as to the U.S. Constitutionality of these two Rules under the fair trial and due process of law provisions of the Fourteenth Amendment of the United States Constitution. Appendix M. The Court's response was to defer the decision, filed February 9. 2006, Appendix G .

Under (b) above :

Appellate Judge Carol Hansen's Opinion in Oklahoma Civil Court Case # 99704 included :

(aa) one obviously false statement: [Olson ... , but submitted no evidentiary materials whatsoever],

(bb) adopted a summary judgment order that contained the word "probably" in it,

(cc) misconstrued the necessity of attached evidentiary materials,

(dd) did not critically test the applicable case law [(1) vested production estate not governed by lease expiration, (2) surrender of lease not valid without vacating the premises, and (3) Applied before production case law to a vested, after established production situation].

Judge Hansen never did recuse. She could not afford to lose control of the case.

False statement in Judge Bell's Opinion in Oklahoma Court of Civil Appeals Case # 102933
Appendix EE

In this Opinion, Judge Bell stated in paragraph 4, (Appendix A, in U.S. Appeal 07-784) that:

> "Plaintiff's pleadings were based on alleged inappropriate ex parte communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings."

about which Plaintiff knew during the original trial proceedings." ??

How could Plaintiff possibly know about the clandestine, substantive ex parte Case Summary Notebook during the original trial proceedings ?? The answer is that Plaintiff could not know and did

not know of the clandestine, substantive ex parte communications during the original trial proceedings.

The Statement : "...**about which Plaintiff knew during the original trial proceedings.**" is a very subtle lie because it implies Plaintiff knew about the Case Summary Notebook before the summary judgment was pronounced by the trial court. If the Plaintiff knew about the Case Summary Notebook before the summary judgment was pronounced, that imputed knowledge would eliminate the charge of fraud. That should be a strongly censured ***Brady*** violation, especially for a Judge to do it.

And then, in Paragraph 11 of Judge Bell's Opinion he states : "We are cognizant of the fact opposing counsel neglected to provide Plaintiff with a copy of the notebook. However, Plaintiff makes no allegation that the notebook contained anything other than copies of opinions, with some highlighted text, indexed to the summary judgment briefs. Such action does not constitute fraud." Of Course, this does not say which copies of opinions or which highlighted text. Therefore, Plaintiff did not have

the opportunity to rebut the case law opinions or to rebut the highlighted text. Thus Plaintiff did not receive a fair trial and that is fraud against the Plaintiff, practiced by Judge Franklin.

By this statement on Page 11, Judge Bell is saying:

1. Notice was required.
2. Only one copy implies notice was not contemplated by opposing counsel.
3. Since the Judge did not file the Notebook of record, he knew the Notebook was to be concealed.
4. Copies of what case law ? Unknown ? What was highlighted ?
5. Plaintiff had no opportunity to respond.

There is Oklahoma Supreme Court Case Law that says clandestine, substantive ex parte assistance to the judge in making his decision, by counsel of one side without notice to the other party, as discussed above, does constitute fraud on the party that does not receive notice. ***Fellows v. Owens,*** 1936 OK 722; 62 P.2d 1215.

Question (6.) Should Trial Judge Franklin and Appellate Judge Hansen have recused ?

As has been discussed above, the answer is yes.

Direct and Concise Argument Amplifying the Reasons Relied On for an Allowance of the Writ

Introduction

I, Plaintiff / Appellant / Petitioner, have proceeded on this from the point of view of having been denied Due Process of Law by the Trial Judge. I am proceeding with reference to Constitutional criminal law because it is definitive of the actions of the representatives of the sovereign State that constitute violations of the Due Process Of Law Provision of the Fourteenth Amendment of the United States Constitution.

The representatives of the sovereign state governed by the Fourteenth Amendment include the legislature, through its courts, or through its executive or administrative officers. ***Mooney v. Holohan,*** 294 U.S. 103; 55 S. Ct. 340; 79 L.Ed. 791.

Some basic tenets of ***Mooney, supra.,*** are:
Upon the state, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution.
AND

The constitutional requirement of due process in safeguarding the liberty of the citizen against deprivation through the action of the state embodies

the fundamental concepts of justice which lie at the base of the civil and political institutions of the United States.
AND

The due process clause of the Fourteenth Amendment governs any action of a State through its legislature, its courts, or its executive officers, including action through its prosecuting officers.

This means the Judges are included as representatives of the sovereign state that are governed by the Due Process of Law provision of the Fourteenth Amendment.

Normally the only representative of the sovereign state in a civil lawsuit is the judge. Any extrinsic evidence of judicial misbehavior and/or judicial lack of attention to the due process provisions of the Fourteenth Amendment is minimized in the record.

By continuing to pursue the case, I, Petitioner, was able to flush out the tangible proof of the first trial court's violation of the Due Process of Law provision of the Fourteenth Amendment of the United States Constitution.

Jury Trial

The Plaintiff / Petitioner was always due a jury trial. Title 12 O.S. §§ 556, 556.1, 557. See also I.C. Gas Amcana, Inc., v. J.R. Hood, (Okla. 1992) 855 P.2d 597, 599; 1992 OK 119.

The jury trial issue was raised in almost every communication Petitioner had with the court system in Oklahoma from the first Motion to Deny Defendants' motions for summary judgment through the four Petitions in Error to the Oklahoma Supreme Court. The concept of a jury trial was completely ignored by all phases of the Oklahoma Courts.

Brady Violations

Judge Franklin, as a representative of the sovereign State of Oklahoma deliberately deceived the Plaintiff / Petitioner, Dr. Robert Olson, by accepting and using a clandestine, substantive ex parte Case Summary Notebook from opposing counsel without filing the document of record and without giving notice to the Plaintiff. No notice to the Plaintiff is suppression of evidence by the Judge; A ***Brady*** violation of Due Process of Law. It is a ***Brady*** violation by virtue of (1.) the evidence was suppressed, (2.) the evidence was favorable to the party without notice. (Note:) If the evidence in

the case summary notebook were true, it would have been exculpatory, thus Defendants would not have been able to steal Plaintiff's vested personal property; If the evidence were false, then the intrinsic fraud could be proven--(impeachment evidence) So, (3.) either way above, the suppressed evidence was material. ***Brady v. Maryland,*** 373 U.S. 83; 83 S. Ct. 1194; 10 L. Ed.2d 215; ***Smith v. Kerby,*** 50 F.3d 801; 1995 U.S. App.; ***United States v. Bagley,*** 473 U.S. 667; 105 S. Ct. 3375; 87 L. Ed.2d 481 ; ***United States ex rel Almeida v. Baldi, et al.*** 195 F.2d 815; 1952 U.S. App.; 33 A.L.R.2d 1407.

Judge Franklin accepted false testimony (opposing counsel's briefs) and suppressed the case summary notebook. Plaintiff had no opportunity to correct the false testimony of opposing counsel in either direct rebuttal of the case summary notebook, or oral argument in the hearing or in a brief in chief to the appeals court because of Oklahoma Supreme Court Rule 1.36.

The judges in the Oklahoma Courts of Civil Appeals, (Judge Carol Hansen and Judge Robert Dick Bell) were aware the facts and law in Judge Franklin's Summary Judgment Order of Aug 11, 2003 and in Judge Hansen's Opinion in Oklahoma Court of Appeals, Div III, Case # 99704, filed

February 17, 2004, were false, untrue and legally wrong. None of the appellate courts would take any corrective action toward known false testimony, data and information.

Presiding District Judge Ray Dean Linder was well aware the evidence in Judge Franklin's order was false but Judge Linder refused to vacate Judge Franklin's Summary Judgment Order. (The refusal Order is in Blaine County District Court Case CJ-2002-151, filed Dec 6, 2005, Appendix B, in U.S. Appeal # 07-784).

Jurisdiction

When Judge Franklin accepted "assistance" from opposing counsel without giving notice to the Plaintiff, Judge Franklin could no longer be considered unbiased. By not giving notice to the Plaintiff and not filing the Case Summary Notebook of record, Judge Franklin was acting on behalf of the Defendants. By doing that, Judge Franklin stepped down from the bench and became an active member of the Defendants' legal team. By perpetrating this extrinsic fraud Judge Franklin lost jurisdiction of the case. ***In re Murchison et.al.,*** 349 U.S. 133; 75 S.Ct. 623; 99 L.Ed. 942. See also ***Nardi v. Poinsatte,*** 46 F.2d 347 and ***Petition of Dare,*** Okla. Crim. App., 370 P.2d 846.

Fourteenth Amendment, Due Process, refusing to hear oral argument.

Judge Franklin did not allow the Plaintiff to present oral argument in the original summary judgment hearing. Transcript, Appendix K. The court thus suppressed Plaintiff's right to a fair trial before a fair tribunal. ***Fero v. Kerby,*** 39 F.3d 1462, [HN11]. It is the duty of the trial court to guard and enforce every right secured by the Constitution. ***Mooney v. Holohan,*** 294 U.S. 103; 55 S.Ct. 340; 79 L.Ed. 791.

In ***Ake v. Oklahoma,*** 470 U.S. 68; 105 S.Ct. 1087; 84 L.Ed.2d 53 HN1 The Oklahoma waiver rule does [***61] not apply to fundamental trial error. See ***Hawkins v. State,*** [569 P.2d 490, (Okla. Crim. App. 1977)], ***supra,*** at 493; ***Gaddis*** [*75] ***v. State,*** 447 P.2d 42, 45-46 (Okla. Crim. App. 1968). Under Oklahoma law, and as the State conceded at oral argument, federal constitutional errors are "fundamental". Tr. of Oral Arg. 51-52; See ***Buchanan v. State,*** 523 P.2d 1134, 1137 (Okla. Crim. App. 1974)(violation of constitutional right constitutes fundamental error); See also ***Williams v. State,*** 658 P.2d 499 (Okla. Crim. App. 1983).

District Court Rule 13.

District Court Rule 13 is being used and abused as the primary legal dispute mechanism in the State of Oklahoma. The Rule 13 is being abused by the extensive use of clandestine, substantive, ex parte case summary notebooks given to judges by attorneys after the statutorily required documents have been filed and just before the decision is to be rendered. (See the Transcript of hearing before Judge Linder, held January 13, 2005, Appendix pages 8-53 in the U.S. Appeal # 05-1057, Robert Olson v. The Honorable Judge Ronald G. Franklin.)

These case summary notebooks given to the judges by the attorneys are provided ex parte and provide the judges with a "Cliffs Notes" summary of case from that attorneys' point of view. The judge receives the attorney's work product at no cost. The judge also uses the "Cliffs Notes" document to make "it a little easier to collect your thoughts when you get ready to draft your order." (Judge Linder Transcript of January 13, 2005, Appendix page 36, in Transcript page 33, in the U.S. Appeal # 05-1057, Robert Olson v. The Honorable Ronald G. Franklin.)

What Judge Linder admits to above is a petit bribe. When judges expect (Transcript above, page

33, ln 21-25) to receive the case "Cliffs Notes", they will not read the briefs. Reading the briefs is replaced by "reviewed the briefs". Thus without oral argument, the judge never really has the actual informational materials before him. This deprives the litigants of true unfettered access to the law. There is no notice and no entry in the record of the "Cliffs Notes". The attorneys love the process because it gives them unrecorded, unsupervised clandestine access to the judges. Judges like the process because they can depend on the attorneys to do the legal research for them at no cost to their budget. The public does not know this is happening.

Judges doing this is a dereliction of the duty and of the constitutional requirement of due process in safeguarding the liberty of the citizen against deprivation through the action of the state which embodies the fundamental conceptions of justice which lie at the base of the civil and political institutions of the United States. Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution. ***Mooney v. Holohan,*** 294 U.S. 103; 55 S.Ct. 340; 79 L.Ed 791.

The above arrangement is a gross violation of the due process of law provision of the Fourteenth Amendment because there is no opportunity to

respond to the assertions contained in the "Cliffs Notes".

If Rule 13 is to be the primary legal dispute mechanism for the State of Oklahoma, it should be codified statewide into the statutes.

Concerning Oklahoma Supreme Court Rule 1.36

From: ***Giglio v. United States,*** 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed.2d 104 :

> [HN6] As long ago as ***Mooney v. Holohan,*** 294 U.S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in ***Pyle v. Kansas,*** 317 U.S. 213 (1942). In ***Napue v. Illinois,*** 360 U.S. 264 (1959), we said, "the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." ***Id.,*** at 269. Thereafter ***Brady v. Maryland,*** 373 U.S. , at 87, held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution."

The application of Oklahoma Supreme Court Rule 1.36 in Oklahoma Appeal # 99704 did not

allow the Plaintiff to brief the Oklahoma appeals Courts and by that be able to address the false evidence in Judge Franklin's Summary Judgment Order. After Judge Hansen's Opinion in Oklahoma Appeal # 99704 incorporated all the false information, false evidence and erroneous conclusions of law, and released for publication, the Petition for Rehearing and Petition for Certiorari pointing out the false evidence and erroneous conclusions of law, fell on deaf ears. The Appeals Courts would make no corrections. This was all before Plaintiff was aware of the fraud of the case summary notebook and its suppression by Judge Franklin.

Oklahoma Supreme Court Rule 1.36, accelerated appeal is a relatively new appellate procedure with a history of lower justice than the normal appellate procedure. By refusing to accept briefs (Appendix FF, page FF8, quoted below), the Oklahoma Supreme Court Rule 1.36 procedure provides no opportunity to dispute any erroneous conclusions of fact nor any opportunity to dispute any erroneous conclusions of law espoused by the District Court trial judges, especially under the "Cliffs Notes" system.

From the: Oklahoma Civil Procedure Forms and Practice, Second Edition, Volume 2, Clyde A. Muchmore and Harvey D. Ellis, Jr. :

> Sup. Ct. R. 1.36 provides that on appeal, the Court will consider only the items included in the record, listed above, with no further briefing unless otherwise ordered (which the rule makes clear will be an unusual case).

Thus the citizen is deprived of due process of law provision of the Fourteenth Amendment of the Constitution because he has no way to speak to the appellate court to dispute any erroneous facts or erroneous conclusions of law.

"Fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." ***Mathews v. Eldridge,*** 424 U.S. 319; 96 S.Ct. 893;47 L.Ed.2d 18.

Oklahoma Supreme Court Rule 1.36 does not meet that requirement.

The district Court Rule 13 and the Oklahoma Supreme Court 1.36 are designed to clear the docket rather than ensure justice. This is a violation of the courts' duty as described in ***Mooney v. Holohan,*** 294 U.S. 103; 55 S.Ct. 340; 79 L.Ed.91.

When Appeals Judges make false statements in their Opinions

When an Appeals Court Judge knowingly makes a false statement in the Opinion and actually recites and condones a trial court ***Brady*** violation by the court, that is in itself a violation of the duty of the court to guard and protect every right secured by the Constitution. ***Mooney v. Holohan,*** 294 U.S. 103: 55 S.Ct. 340; 79 L.Ed. 791.

Judge Hansen in her Opinion in Oklahoma Appeal # 99704 quoted Judge Franklin:

> "[T]he old leases have quite probabl[y] expired under the terms of said leases for failure to produce."

Judge Hansen knew the old leases had not expired. If they had done so, she would have stated so straightaway to end the question. It can be proven that the old leases did not expire. Judge Hansen also knew three new wells had been drilled successfully.

Summary judgments are supposed to be definite. For Judge Hansen to use the equivocation word "probably" outright would have been subject to review. But to quote Judge Franklin allows Judge Hansen use the concept without having ownership of the equivocation.

For Judge Hansen to use oil and gas lease primary term case law in a vested secondary lease term situation could be just plain legal ignorance. But for subsequent Appeals Courts to affirm that legal ignorance knowing that it was legally wrong is the same as allowing false evidence to be presented without correction. ***Napue v. Illinois,*** 360 U.S. 264 (1959).

Oklahoma Court of Civil Appeals Case # 102933, Judge Robert Dick Bell (Opinion 29 days from Appellant's request for rehearing on the disqualification of Judge Hansen) writes in paragraph 4 of his Opinion:

> "Plaintiff's pleadings were based on alleged inappropriate ex parte communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings."

How could the Plaintiff know about the suppressed case summary notebook when it was not filed of record and no notice was given to the Plaintiff ?

Judge Franklin and Judge Hansen should have recused.

A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But the United States system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered.

The United States Supreme Court has said , however, that every procedure which would offer a possible temptation to the average man as a judge, not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law. ***Offutt v. United States,*** 348 U.S. 11; 75 S.Ct. 11; 99 L.Ed. 11.

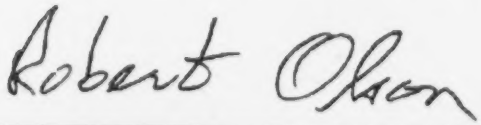
Justice must satisfy the appearance of justice. ***In re Murchison, et.al.,*** 349 U.S. 133; 75 S.Ct. 623; 99 L.Ed. 942.

CONCLUSION

Petitioner has shown the existence of fraud and suppression of evidence by representatives of sovereign State of Oklahoma so as to warrant a new trial for the Plaintiff.

For the reasons and discussion within this Petition for Writ of Certiorari, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: May 5, 2008

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